

# EXHIBIT 69

IN THE MATTER OF: D.L. v. KALAMAZOO  
PUBLIC SCHOOLS, DOCKET NO.: 21-027515,  
HEARING VOLUME I

January 10, 2022

Prepared by



deposit@networkreporting.com  
Phone: 800.632.2720  
Fax: 800.968.8653  
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PLAINTIFFS 00001403

IN THE MATTER OF D.L. v. KALAMAZOO PUBLIC SCHOOLS, DOCKET NO. 21-027515, HEARING VOLUME I

January 10, 2022

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATION HEARINGS AND RULES

In the matter of: Docket No.: 21-027515  
D.L., Case No.: DP-21-0038  
Petitioner, Agency: Education  
v Case Type: ED Sp Ed  
Kalamazoo Public Schools, Respondent. Filing Type: Appeal  
/

HEARING - VOL I

BEFORE MICHAEL ST. JOHN, ADMINISTRATIVE LAW JUDGE

via Microsoft Teams

Monday, January 10, 2022, 9:00 a.m.

APPEARANCES:

For the Petitioner: MS. ERIN HANKINS DIAZ (P80388)  
MR. MITCHELL DAVID SICKON (P82407)  
Disability Rights Michigan (DRM)  
4095 Legacy Parkway  
Lansing, Michigan 48911  
(517) 487-1755

For the Petitioner: MS. ELIZABETH K. ABDNOUR (P78203)  
Elizabeth Abdnoor Law, PLLC  
1100 West Saginaw Street, Suite 4A-2  
Lansing, Michigan 48915  
(517) 292-0067

For the Petitioner: MS. JACQUELYN BABINSKI (P83575)  
MI AECRES  
PO Box 705  
Ludington, Michigan 49431  
(231) 794-2379

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1 For the Respondent: MR. JORDAN MICHAEL BULLINGER (P72441)  
2 Clark Hill, PLC  
3 200 Ottawa Avenue, NW, Suite 500  
4 Grand Rapids, Michigan 49503  
5 (616) 608-1146  
6  
7 For the Respondent: MS. KATIE ILIJC (ESQ)  
8 Clark Hill, PLC  
9 500 Woodward Avenue, Suite 3500  
10 Detroit, Michigan 48226  
11 (313) 965-8300  
12  
13 Also Present: D.L., Reuquiyah Saunders  
14  
15 RECORDED BY: Marcy A. Klingshavn, CER 6924  
16 Certified Electronic Recorder  
17 Network Reporting Corporation  
18 Firm Registration Number 8151  
19 1-800-632-2720  
20  
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1 interesting, form a very small percentage of the basis for  
2 your evaluation; correct?

3 THE WITNESS: Yes.

4 JUDGE ST. JOHN: Yeah. All right. You relied on  
5 the tests that you did and presumably you interviewed the  
6 young man, too; right?

7 THE WITNESS: Yes, your Honor.

8 JUDGE ST. JOHN: And that that's the majority of  
9 your opinion. You review records in the past to give you  
10 sort of a better view and to get a full picture, but the  
11 vast majority of your opinion is based on your -- the tests  
12 that you did and the interview you performed with him;  
13 correct?

14 THE WITNESS: Yes, your Honor.

15 JUDGE ST. JOHN: All right. Yeah. The objections  
16 are noted but overruled. This is admitted as Petitioner's  
17 Exhibit Number 2.

18 MS. DIAZ: Thank you.

19 (Petitioner's Exhibit 2 received)

20 JUDGE ST. JOHN: All right. You're welcome. But  
21 you have to give me a minute to make a note of that. All  
22 right. Go ahead with your direct exam.

23 MS. DIAZ: Thank you.

24 Q Dr. Owens, through your evaluation what did you determine  
25 about D.L.?

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1 with the verbal and the nonverbal, but also there was the  
 2 working memory which is huge, the attention piece. But in  
 3 terms of accommodations, we would have emphasized -- and  
 4 I'm -- sight based approaches, we would have had assistive  
 5 devices, we would use audio text, we would use dictation  
 6 systems such as speech to text. In addition to, you know,  
 7 these interventions by the educational specialist to target  
 8 his reading performance.

9 Q Okay. And you had said his reading was at about a third  
 10 grade level and his math is about a fourth grade level; is  
 11 that accurate?

12 A I would have to look at the report, but between third and  
 13 fourth grade for the academic areas that I screened, yes.

14 Q Okay. And I apologize. You mentioned you wanted to talk  
 15 about the working memory piece. So what kinds of

16 accommodations would have helped with the working memory?

17 A Working structured situations, so where he would sit close  
 18 to the teacher, where he would have had a desk that limited  
 19 distractions, that he would have had a peer to help him stay  
 20 on task as he spoke of daydreaming interfering with task  
 21 performance. There are numerous things that an educational  
 22 specialist could put in place and one of the things that  
 23 would address both of them that is highly recommended and  
 24 traditional is that he had a safe person that he could go  
 25 to, to, one, reiterate what compensatory strategies that he

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1 A I would --

2 MS. ILIJC: Objection; relevance. We're going  
 3 back to 2012 again.

4 JUDGE ST. JOHN: Response?

5 MR. SICKON: Dr. Bateman's already established  
 6 that the comprehensive battery of evaluations at the initial  
 7 eligibility stage sets the foundation for the entire  
 8 educational program. Missing information at that stage is  
 9 critical. It informs all the rest of the educational  
 10 programming going forward.

11 JUDGE ST. JOHN: I mean, I think he's got a point  
 12 there. I mean, I'm limited the remedy to two years back,  
 13 but to the extent that they're going to establish that  
 14 the -- or try and establish that the district missed things  
 15 going back beyond two years.

16 MS. ILIJC: Can I respond?

17 JUDGE ST. JOHN: Go ahead.

18 MS. ILIJC: As your Honor noted in your ruling on  
 19 the orders, Child Find is an ongoing issue. So presumably  
 20 if there was an issue in 2012, counsel can make a showing  
 21 that there was also an issue in 2019 without creating a  
 22 record that spans over a decade.

23 JUDGE ST. JOHN: Well, but I think the point  
 24 they're making is, is nobody looked in 2019, at least that's  
 25 my understanding of their, their case. Is they weren't

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1 looking in 2019 and they should have been because they had  
 2 information as far back as 2012 with this document and  
 3 teacher Brown's concerns. So I think that's appropriate, so  
 4 your objection is overruled. So why don't you ask the  
 5 question again, Counselor?

6 MR. SICKON: Sure thing.

7 Q Dr. Bateman, based on, you know, the teacher concerns that  
 8 you're seeing both here and on the MET, what would you  
 9 expect to see in terms of evaluations?

10 A I would have expected an evaluation to help us determine the  
 11 social emotional needs of a student. Because of you having  
 12 a teacher who's raised this, or basically waving this red  
 13 flag saying that this student is having these problems  
 14 seldom or never in this multiple areas, that I would have  
 15 expected at least an evaluation that would have looked at  
 16 some social emotional skills of this child and make a  
 17 determination whether social or emotional skills were a  
 18 weakness in addition to the reading problems that were  
 19 highlighted as a part of the previous document.

20 Q No. That's what you would expect to see. What did you see?

21 A That -- I didn't see that. I just saw things related to  
 22 reading.

23 Q Oh, in terms of evaluations performed? I apologize.

24 A I'm sorry. I didn't see that. I only saw things relating  
 25 to reading. I apologize if I didn't make myself clear.

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1 Q No. That's probably my fault. Now, could you describe as  
 2 an expert what the impact is of not having that information  
 3 at the outset for D.L.?

4 A Without that information, then you can't provide a -- you  
 5 can't make an appropriate determination first about their  
 6 full eligibility for special education services, and then  
 7 you can't make an adequate determination about the  
 8 appropriate programming for a child. Because with --  
 9 without -- without information relating to any information  
 10 related to social emotional issues, you can't provide  
 11 programming that would help or assist if that was found to  
 12 be a need for a child.

13 Q Okay.

14 MR. SICKON: I'd like to move now back to  
 15 Respondent's Exhibit 6.

16 (Judge shares exhibit via video)

17 Q Now, in D.L.'s educational record, did you find any academic  
 18 performance evaluations?

19 A There were -- occasionally there were some academic  
 20 performance evaluations, but I think that maybe we can look  
 21 more specifically at a document here to see as you scroll  
 22 down that the review of existing data on this one. Okay. I  
 23 mean, you have -- you have some -- you have some state  
 24 assessments -- you have some state assessments, but state and  
 25 district assessments since they're given as a group should

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1 not be used to help make a determination about a child's  
 2 individual educational programming. The individual  
 3 assess- -- it's very specific that we need to make sure that  
 4 the assessments provided to a child are individualized and  
 5 given not as a part of a group administration. So, yes.  
 6 But I would absolutely report group administered tests as a  
 7 part of an evaluative tool. So I think it's appropriate  
 8 that they did include that, such as that, but that's not  
 9 what I would use to rely on where we are with the child.  
 10 Q Yeah. And so to that point, what is the difference between  
 11 some of these more foundational evaluations you're talking  
 12 about and let's say the NEWEA (sic) assessments or the state  
 13 and local assessments? What's the difference between those?  
 14 A The individualized assessments are a normative basis that  
 15 gives us some sense of where the child is functioning  
 16 compared to their peers, exactly like the other ones are.  
 17 However, the NWEA and the other state assessments are  
 18 typically given as a grade level assessment. And so if a  
 19 child is not functioning at that grade level, it's not going  
 20 to give an accurate determination yea or nay about how  
 21 they're functioning. So the other one goes across a broader  
 22 range of scores and a wide arrange of variability so we have  
 23 a better sense of where the child's currently functioning.  
 24 That's the purpose behind these tests. For instance, like  
 25 I'll posit ones like we often give is the Woodcock-Johnson.

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1 appropriate. However, for students eligible for special  
 2 education related services, one of -- especially those with  
 3 behavior problems, one of the things we have to look at very  
 4 specifically is whether the behavior is a manifestation of  
 5 the disability and are there appropriate goals and supports  
 6 necessary to approve and work with said disability that the  
 7 child has relating to their behavioral issues.  
 8 Q Based on your review of the IEPs, were there supports in  
 9 place to provide D.L. the appropriate skills to change his  
 10 behavior to learn prosocial skills?  
 11 A There were not.  
 12 MR. SICKON: Judge, I'd like to move to admit  
 13 Plaintiff's (sic) Exhibit 23.  
 14 JUDGE ST. JOHN: Any objection?  
 15 MS. ILIJC: No objection.  
 16 JUDGE ST. JOHN: 23 is admitted then without  
 17 objection.  
 18 (Petitioner's Exhibit 23 received)  
 19 Q Okay. And just one last question on this, Dr. Bateman.  
 20 Would you expect more explanation in the rationale for  
 21 their -- the school's determination?  
 22 A Yes.  
 23 Q Could you expand on that?  
 24 A Yeah. I would expect more and what I would expect was  
 25 a clearly defined list of the behaviors this child is

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1 the football players that's doing GradPoint, too, would help  
 2 me.  
 3 Q When you say they helped you, they -- they just sort of did  
 4 it for you?  
 5 A Yeah. And I focused on my other classes.  
 6 Q Okay. All right. Now one of the attorneys wanted me to ask  
 7 you that there was -- there was somebody who stood in as  
 8 sort of a father figure for you as you were growing up. Who  
 9 was that?  
 10 A Can you repeat that?  
 11 Q That one of the attorneys wanted me to ask you about there  
 12 was somebody who stood in as sort of like a father figure  
 13 for you? It's a little hard to follow, but maybe your  
 14 cousin? Your cousin who passed away, is that --  
 15 A Yeah. My ninth grade year.  
 16 Q Oh, ninth grade year. Okay. What happened to your cousin?  
 17 A He had got in a car accident.  
 18 Q I'm sorry to hear that. All right. And he was sort of like  
 19 a father figure to you?  
 20 A He was like a big brother.  
 21 Q Big brother. Okay.  
 22 A I think you talking about my uncle.  
 23 Q Oh, your uncle. Okay.  
 24 A Yeah. He died from a gun violence.  
 25 Q Oh, I'm sorry to hear that, too. How old were you when that

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1 happened?  
 2 A That was going in my senior year.  
 3 Q Oh, okay.  
 4 A Turning 18.  
 5 Q Was it over the summer before your senior year or during  
 6 your senior year?  
 7 A Yeah, the summer.  
 8 Q The summer. Okay.  
 9 A During football practice and stuff.  
 10 Q Oh, jeez. I'm sorry to hear that. How did that -- how did  
 11 that affect you, losing your cousin and losing your uncle?  
 12 A I stopped talking to people.  
 13 Q How long did that last?  
 14 A A minute. I feel like I was going to explode on somebody so  
 15 I just -- but during that I had got in trouble during  
 16 football practice. I had to sit -- sit out two games  
 17 against two rival teams because I had got -- I had exploded  
 18 during practice, my helmet.  
 19 Q Yeah, that's a no-no.  
 20 A Yeah. But then I came back, played a game, and then I got  
 21 kicked out of the last -- our last game, too. So senior  
 22 year wasn't my best year.  
 23 Q Okay. Yeah. Sometimes that happens. Do you still want to  
 24 play do you think?  
 25 A Yeah.



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1       caught me doing that.  
 2   Q    Okay. All right. We're getting there. So do you need a  
 3       break? You doing okay?  
 4   A    No.  
 5   Q    Okay. Let's keep going then. I don't see any of the  
 6       attorneys frantically waving their hands or arms to need a  
 7       break, so we'll keep going. But I'm not really looking  
 8       either, so -- do you remember going to some of these IEP  
 9       team meetings, especially after you turned 18?  
 10   A    Yeah. I remember the one in December.  
 11   Q    Okay. Had they invited you to other ones before that or was  
 12       that the first one?  
 13   A    That was the -- that was the first one.  
 14   Q    Okay. All right. So if there was one earlier that they  
 15       invited you to that maybe you didn't make it to --  
 16   A    Yeah.  
 17   Q    Yeah? Okay.  
 18   A    I didn't have IEP meetings like that my whole four years.  
 19       That was the first time.  
 20   Q    Okay. All right. So what happened at that December IEP  
 21       meeting?  
 22   A    I was -- they wanted me to go to -- well, I wanted to  
 23       graduate on time and they wanted me to switch schools and do  
 24       it that way, but they said if I switched schools, I wasn't  
 25       going to get help. But I feel like I wasn't getting help at

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1       Central anyway, so I might as well stay and graduate with  
 2       the class that I -- I am and graduate with my friends. And  
 3       somebody said that wasn't going to look good. I don't  
 4       remember who said it in the meeting, but they said it wasn't  
 5       going to look good for recruiting for football meets which  
 6       in school is at the end of the year. That's when they said  
 7       something about GradPoint.  
 8   Q    And that's where you could recover some of the credits you  
 9       missed out on earlier; right?  
 10   A    Yeah.  
 11   Q    Yeah. Okay. Did you want to go -- it sounds like at some  
 12       point somebody offered some summer school?  
 13   A    Yeah. They said I could do summer school or I could do a  
 14       lot of GradPoint classes, but once I do GradPoint I'm all on  
 15       my own.  
 16   Q    Okay.  
 17   A    I just decided to do the GradPoint. And my mom had told me  
 18       don't go out the easy way. Don't switch schools at the last  
 19       minute. Because at Phoenix, it's only 18 credits. That was  
 20       taking the easy route. So she told me just fight it, then  
 21       that's when I got to buckling down on my work.  
 22   Q    Okay. They talk about possibly coming back for a fifth year  
 23       of high school?  
 24   A    Yeah. George White had said -- he brought that up to me, but  
 25       he brought that up to me, like, the week before I graduated.

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1       it's very subjective.  
 2   Q    You didn't do any testing that would have provided you with  
 3       a full-scale IQ for D.L.; correct?  
 4   A    Correct. It's not required. The federal government and the  
 5       state government doesn't require a cognitive assessments and  
 6       they don't require standardized assessment for that fact  
 7       either. So it's not a federal government requirement, it's  
 8       not a state government requirement, and so, and I didn't  
 9       feel that it was necessary as far as providing services for  
 10      D.L.  
 11   Q    And you didn't feel -- didn't feel like it was necessary to  
 12       do a psychoeducational evaluation?  
 13   A    No, I didn't feel like it was necessary to administer a  
 14       cognitive assessment.  
 15   Q    Okay. Yeah, and at the end of the REED in 2018 you found  
 16       that no additional needed -- data was needed to determine  
 17       D.L.'s educational needs; right?  
 18   A    Correct.  
 19   Q    Okay. I'd like to move on to behavior. In addition to  
 20       academic performance and cognitive ability, there are  
 21       evaluations for behavior; right?  
 22   A    There are -- again, this is tricky. There are not -- there  
 23       are eval -- when you do an evaluation, we have to look at  
 24       all eligibility areas. So I'm not -- I'm not saying I'm not  
 25       doing an evaluation for behavior necessarily. I'm doing an

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1       evaluation and I'm looking at all eligibility areas.  
 2   Q    Okay. I was just asking if there were behavior evaluations?  
 3   A    There are -- there are rating scales that you can administer  
 4       that relate to behavior, correct.  
 5   Q    Okay. And there's other kinds of assessments. For example,  
 6       if there's information that you learned that a student was  
 7       having behavior issues and you were aware that they had a  
 8       recent traumatic event, would it be appropriate to do a kind  
 9       of trauma evaluation for that student?  
 10   A    I'm not -- that is not an area of my expertise. I do not do  
 11       trauma evaluations. That would be something that I would --  
 12       that I would try to connect them with a community mental  
 13       health resource depending on the severity of the trauma.  
 14   Q    And during your time working with D.L., you knew that he had  
 15       recurring behavior issues; right?  
 16   A    I knew that there were some behavioral incidences, yes.  
 17       However, they, as far as I understood, they were being  
 18       addressed through a behavior plan.  
 19       MR. SICKON: And, Judge, if we could go, leave the  
 20       REED and head to Petitioner's Exhibit 20, specifically Bates  
 21       stamp number 317? And this one I think might be flipped.  
 22       I'm not sure. This one got scanned a little bit funny.  
 23       Yeah, thank you.  
 24       (Judge shares exhibit via video)  
 25   Q    So here, Ms. Morcom, we're looking at a history of

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1 under advisement, again, raising the standing objections  
 2 we're going to begin to talk about the record.  
 3 JUDGE ST. JOHN: Yeah.  
 4 MR. BULLINGER: Putting the objection there.  
 5 JUDGE ST. JOHN: Noted but overruled. The first  
 6 page of this is 253, so --  
 7 MR. SICKON: My apology. I will pull it up in my  
 8 binder and give you a better number. 263, Judge.  
 9 JUDGE ST. JOHN: Okay. Of 16.  
 10 MR. SICKON: Yes.  
 11 JUDGE ST. JOHN: 263.  
 12 (Judge shares exhibit via video)  
 13 MR. SICKON: Okay. And just so we can see the  
 14 short term or actually the annual goal there?  
 15 Q Ms. Morcom, for this IEP in 2019, D.L.'s reading goal was to  
 16 progress from -- no, it was to include two details by  
 17 reading various texts at grade level and use comprehension  
 18 strategies to identify four to six important key details  
 19 with 85 percent accuracy; isn't that right?  
 20 A **Correct.**  
 21 MR. SICKON: And if we could move to Petitioner's  
 22 Exhibit 17, please, Judge? And that's 278 for that Bates  
 23 stamp.  
 24 (Judge shares exhibit via video)  
 25 Q Okay. And, Ms. Morcom, this is an IEP for D.L. that's from

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1 October 2019; correct?  
 2 A I'm still looking at the goal for -- I don't know. I'm --  
 3 are we loo -- are we still looking at the reading goal and  
 4 objective? Is that what I'm supposed to be looking at?  
 5 Q Yeah. We've moved from the April 2019 IEP to the October  
 6 2019 IEP. We're still looking at the same reading goal, but  
 7 I just asked if you could confirm that this is the October  
 8 2019 IEP?  
 9 A I don't know. I can't see the date. I don't -- I don't  
 10 know what I'm looking at.  
 11 Q It's in the top corner.  
 12 JUDGE ST. JOHN: Right here (indicating).  
 13 THE WITNESS: Where is it?  
 14 JUDGE ST. JOHN: Where my hand is moving. IEP  
 15 date up in the upper right-hand corner.  
 16 A So we're on the October 2019 IEP; correct?  
 17 Q That's what I was asking.  
 18 A **Yes, correct.**  
 19 Q Okay. And D.L.'s goal in this IEP for reading is that he be  
 20 able to read from a grade appropriate text providing a  
 21 summary that includes two details by reading various texts  
 22 and use comprehension strategies to identify four to six  
 23 important key details with 85 percent accuracy; correct?  
 24 A **Correct.**  
 25 Q That's identical from his previous one; correct?



PLAINTIFFS 00001806



PLAINTIFFS 00001807

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1 A **Apparently, yes.**  
 2 MR. SICKON: I'd like to move to Petitioner's  
 3 Exhibit 19, your Honor.  
 4 (Judge shares exhibit via video)  
 5 MR. SICKON: This is at 307. Yup, got it. Thank  
 6 you.  
 7 Q And Ms. Morcom, can you confirm that this is D.L.'s IEP from  
 8 October of 2020?  
 9 A **Correct.**  
 10 Q And his reading goal in this IEP is that he will read a  
 11 grade appropriate text and provide two details from reading  
 12 these texts and use comprehension strategies to identify  
 13 four to six important key details with 80 percent accuracy;  
 14 is that right?  
 15 A **Correct.**  
 16 Q So it would be accurate to say that we've lowered the bar of  
 17 expectations for D.L. between these three IEP goals because  
 18 the first two were 85 percent and now it's at 80; right?  
 19 A **Correct.**  
 20 Q Otherwise, the goals are identical; correct?  
 21 A **They appear to be, yes.**  
 22 Q Thank you. You also had a discussion with Mr. Bullinger on  
 23 a couple of different areas about the subject of concussion  
 24 or trauma.  
 25 A **Correct.**

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1 Q And while you confirmed that nobody spoke directly to you  
 2 about those concerns, it's possible that those concerns were  
 3 voiced to another staff member; correct?  
 4 A **Correct.**  
 5 MR. BULLINGER: Objection, your Honor. Calls for  
 6 speculation.  
 7 JUDGE ST. JOHN: Well, that was implied in the  
 8 question, so noted but overruled.  
 9 A **Yeah, that was possible --**  
 10 JUDGE ST. JOHN: (inaudible) sustained.  
 11 MR. SICKON: Thank you. Nothing further.  
 12 JUDGE ST. JOHN: Redirect? Re-redirect, wherever  
 13 we are? Further questions, Mr. Bullinger?  
 14 MR. BULLINGER: Thank you, Judge.  
 15 THE WITNESS: Re-redirect? Is that what that is?  
 16 JUDGE ST. JOHN: After 3:00 o'clock I get a little  
 17 punchy, so -- we still have one witness to go, so --  
 18 MR. BULLINGER: Thank you, Judge. I'm just  
 19 reviewing my notes to make sure that I've got what I need  
 20 to.  
 21 JUDGE ST. JOHN: Sure.  
 22 MR. BULLINGER: Judge, no further questions.  
 23 JUDGE ST. JOHN: Okay. Thank you very much, Ms.  
 24 Morcom. You are excused. You have a wonderful day and  
 25 please stay safe out there. Okay?



PLAINTIFFS 00001808



PLAINTIFFS 00001809

IN THE MATTER OF: D.L. v. KALAMAZOO PUBLIC SCHOOLS, DOCKET NO. 21-027515, HEARING VOLUME III

January 12, 2022

Page 432

1 "Student's Current IEP and placement."  
2 (Judge shares exhibit via video)  
3 Q Did you provide the information for that section?  
4 A Yes, I did.  
5 Q And you noted that D.L. was struggling to make progress;  
6 correct?  
7 A Yes, I did.  
8 Q And to what, if anything, did you attribute those struggles?  
9 A D.L. struggled to make progress towards his goals as well as  
10 progress towards graduation requirements due to his  
11 struggles to follow classroom rules and expectations,  
12 school-wide rules and expectations. He also struggled due  
13 to attendance to class as well as behavior in class.  
14 Q Do you recall whether those struggles were discussed at this  
15 meeting?  
16 A It is very typical during a manifestation determination to  
17 discuss student's behavior as well as the barriers to their  
18 success, which in D.L.'s case was his behavior.  
19 Q And did the team determine that this behavior at this  
20 meeting was a manifestation of his disability?  
21 A I believe we determined it was not a manifestation of his  
22 disability.  
23 Q Is that what's reflected on the page that's currently on the  
24 screen?  
25 A Yes.

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